

In the matter of )  
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Rural Health Care Support Mechanism ) WC Docket No. 02-60

SBC Communications Inc. (SBC) and BellSouth Corporation (BellSouth) hereby submit their joint reply comments in response to the Commission’s Notice of Proposed Rulemaking (NPRM) seeking comment on the universal service support mechanism for rural health care providers.<sup>1</sup> SBC and BellSouth agree with Verizon that the current \$400 million cap for rural health care support is much greater than necessary and that no expansion of the program is warranted at this time.<sup>2</sup>

In addressing this threshold issue, the Commission cannot reasonably assume that the rural health care program is underutilized because only a fraction of the available funding

<sup>2</sup> Verizon Comments at 2.

authority is currently being used.<sup>3</sup> As Verizon explains, the Commission established the \$400 million cap in 1997 based on a number of extremely generous (and in some cases incorrect) assumptions. For example, the Commission assumed that there would be approximately 12,000 eligible rural health care providers, but the actual number of eligible providers is closer to 8,300.<sup>4</sup> The Commission also assumed that rural rates would be higher than urban rates, even though the record showed that rates are often averaged between rural and urban areas.<sup>5</sup> Moreover, the Commission assumed that none of the 12,000 rural health care providers would be able to obtain toll-free access to the Internet. In reality, the vast majority of rural health care providers are able to obtain toll-free Internet access.<sup>6</sup> Given these completely unrealistic assumptions, it should not be surprising that the amount of actual funding used by rural health care providers is far below the Commission's cap.

While it may have been reasonable for the Commission to base its initial funding cap for the rural health care program on unrealistic assumptions, it would be patently unreasonable for the Commission to transform this admittedly generous cap into a funding target. The Commission can no longer justify its decision on a lack of data or real world experience administering the rural health care program. Five years of experience has shown that the cap should be reduced to a more realistic level, such as the \$75 million cap proposed by Verizon.<sup>7</sup>

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<sup>3</sup> *NPRM* at ¶2.

<sup>4</sup> Verizon Comments at 2.

<sup>5</sup> *Id.* at 4-5.

<sup>6</sup> *Id.* at 5-6.

<sup>7</sup> *Id.* at 6.

Nor does the overall number of rural health care providers that are participating in the program provide a reliable measure of the program's effectiveness. Unlike the Commission's Lifeline program, which makes support available based on a simple needs determination, Congress established the rural health care program for the specific purpose of ensuring that rural health care providers have access to services at rates that are reasonably comparable to rates charged for similar services in urban areas in that state.<sup>8</sup> The fact that rates for many services continue to be averaged between rural and urban areas provides one of many possible explanations for why more rural health care providers are not seeking support from the program.

The Commission is acting responsibly by reviewing the RHC program, but it has absolutely no basis for considering questionable proposals to expand the program at this time. To the extent services are available to rural health care providers at identical rates, it would not be consistent with the statute to further extend the scope of the program. If, however, the Commission believes that there might be a problem with the availability of affordable telecommunications services for rural health care providers, then it should engage in a more thorough factual examination to determine whether the statutory goals of the rural health care support program are being achieved. Only then would it be appropriate to take action. Especially in light of the growing pressures on the universal service fund, it would be imprudent for the Commission to assume that the RHC program required modification simply because demand for support was far less than originally anticipated by the Commission. Even if the Commission were to ultimately conclude that a problem exists, it should consider whether there are better, more effective ways to ensure that the needs of rural health care providers are being met. In particular, the Commission has already initiated a number of broadband-related

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<sup>8</sup> 47 U.S.C. § 254(h)(2)(A).

proceedings in which it is considering removing a number of significant barriers to impede the deployment of advanced telecommunications services to rural areas. SBC and BellSouth urge the Commission to take prompt and decisive action in these proceedings as a way of promoting the availability and affordability of such services to rural health care providers. As Chairman Powell has recognized, the Commission should look to market forces to achieve the goals of universal service before it risks distorting competition and innovation by expanding the universal service support programs.<sup>9</sup>

The Commission also should streamline the application process for rural health care support as an important first step that should be taken prior to any expansion of the program. Many commenters assert that the administrative burdens associated with the application of rural health care support are sufficient enough to discourage eligible health care providers from applying for such support.<sup>10</sup> To the extent that administrative burdens can be eliminated as a significant deterrent to application, it would facilitate the Commission's effort in gauging how successful the program has been implemented thus far. Of course, the Commission should not hinder its ability to ensure against fraud, waste, and/or abuse in the pursuit of administrative simplicity.

For example, under the guise of administrative simplicity, several commenters propose that the MAD be eliminated in the calculation of support under the RHC program.<sup>11</sup> However, though the Commission may be able to eliminate the MAD or modify distances or population densities in the calculation of support, the statute requires the Commission to compare rates

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<sup>9</sup> Michael K. Powell, Chairman, FCC, "Digital Broadband Migration" Part II (rel. Oct. 23, 2001).

<sup>10</sup> See *e.g.*, California Telehealth & Telemedicine Center Comments at 4..

<sup>11</sup> See *e.g.*, Alaska Federal Health Care Access Network Comments at 5-6.

*within a state.*<sup>12</sup> Contrary to what some commenters suggest, the Commission cannot calculate support based on similar services from different states.<sup>13</sup> Similarly, according to the statute, support for distance-sensitive services cannot extend beyond the boundaries of a state.

SBC and BellSouth share Verizon’s concerns about various proposals for expanding the RHC support program beyond the clear statutory limitations established by Congress. For example, the Commission cannot ignore unambiguous statutory language and make support available to for-profit health care providers, as some commenters argue.<sup>14</sup> The Commission also should not open the door to “hybrid” providers that function in both a non-profit and for-profit capacity because expanding the definition of eligibility in this manner would invite abuse and be impossible to monitor.<sup>15</sup>

Moreover, the Commission should not calculate support based on functional equivalent services when the precise service that the applicant seeks to purchase is available in the urban area being compared, as suggested by some commenters.<sup>16</sup> SBC and BellSouth agree with Midwest Networks, LLC that rural health care providers “should not be able to select any service for comparison purposes just for the sake of increasing the amount of support.”<sup>17</sup> There is no evidence on the record that rural health care providers do not have access to affordable service compared to urban areas. In addition, expanding the program to include services that are priced

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<sup>12</sup> 47 U.S.C. §254(h)1(A).

<sup>13</sup> See *e.g.*, Missouri Telehealth Network, *et. al.*, (Authors) Comments at 13.

<sup>14</sup> See *e.g.*, Center for Telehealth, University of New Mexico Health Science Center at 3-4).

<sup>15</sup> Verizon Comments at 12.

<sup>16</sup> See *e.g.*, General Communications Inc. Comments at 8, Alliance Information Management, Inc. Comments at 2.

<sup>17</sup> Midwest Networks, L.L.C. Comments at 3.

identically in rural and urban areas directly contravenes the plain language of section 254(h)(1)(A).

Further, the Commission must reject the suggestions of some commenters to apply the E-Rate discount methodology to services purchased by rural health care providers.<sup>18</sup> SBC and BellSouth agree with WorldCom that such an application is clearly contrary to the intent of the statute, which specifies that rural health care providers would receive benefits from a different support mechanism than schools and libraries.<sup>19</sup> As such, SBC and BellSouth believe that the Commission should clarify that its current rules do not permit ineligible applicants to avail themselves of universal service support mechanisms not anticipated by the statute merely by forming consortia with eligible applicants.<sup>20</sup> The Commission's rules clearly indicate that, in the case of such mixed membership consortia, the E-Rate discount mechanisms can only be applied to eligible schools and libraries.<sup>21</sup> Similarly, the Commission's rules indicate that the RHC support mechanism applies only to eligible rural health care providers.<sup>22</sup>

Finally, SBC and BellSouth urge the Commission to consider the broader consumer impact of any unwarranted expansion of the universal service program. The program is already under enormous pressure as funding needs continue to increase at a rapid rate. Therefore, the Commission should have compelling evidence that there is a problem with rural health care

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<sup>18</sup> See *e.g.*, Intelenet Commission Comments at 3.

<sup>19</sup> WorldCom Comments at 5.

<sup>20</sup> 47 C.F.R. § 54.501(d)(1) and 47 C.F.R. § 54.601(b)(1).

<sup>21</sup> 47 C.F.R. § 54.501(d)(2).

<sup>22</sup> 47 C.F.R. § 54.601(b)(2).

services that cannot be solved through deregulatory measures before it expands the existing support program.

Respectfully submitted,

/s/ Jeffry A. Brueggeman  
JEFFRY A. BRUEGGEMAN  
GARY L. PHILLIPS  
PAUL K. MANCINI

SBC COMMUNICATIONS INC.  
1401 Eye Street, NW  
Suite 400  
Washington, DC 20005  
(202) 326-8911 – Phone  
(202) 408-8745 – Facsimile

Its Attorneys

/s/ Theodore R. Kingsley  
Theodore R. Kingsley

BELLSOUTH CORPORATION  
Suite 4300  
675 West Peachtree Street, N. W.  
Atlanta, Georgia 30375-0001  
(404) 335-0720

Its Attorney

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